

backed securities on a delayed basis under §230.415(a)(1)(x) that is required to be filed pursuant to paragraph (b) of this section shall be filed with the Commission no later than the second business day following the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

Instruction 2: Notwithstanding paragraphs (b)(1), (b)(2), (b)(4) and (b)(5) of this section, a form of prospectus sent or given in reliance on Rule 434(c) (§230.434(c)) with respect to securities registered on Form S-3 or Form F-3 (§239.13 or §239.33 of this chapter), other than an abbreviated term sheet filed pursuant to paragraph (b)(7) of this section, shall be filed with the Commission on or prior to the date on which a confirmation is sent or given.

(c) If a form of prospectus, other than one filed pursuant to paragraph (b)(1) or (b)(4) of this Rule, consists of a prospectus supplement attached to a form of prospectus that (1) previously has been filed or (2) was not required to be filed pursuant to paragraph (b) because it did not contain substantive changes from a prospectus that previously was filed, only the prospectus supplement need be filed under paragraph (b) of this rule, provided that the first page of each prospectus supplement includes a cross reference to the date(s) of the related prospectus and any prospectus supplements thereto that together constitute the prospectus required to be delivered by Section 5(b) of the Securities Act (15 U.S.C. 77e(b)) with respect to the securities currently being offered or sold. The cross reference may be set forth in longhand, provided it is legible.

NOTE: Any prospectus supplement being filed separately that is smaller than a prospectus page should be attached to an 8½" × 11" sheet of paper.

(d) Every prospectus consisting of a radio or television broadcast shall be reduced to writing. Five copies of every such prospectus shall be filed with the Commission at least five days before it is broadcast or otherwise issued to the public.

(e) Each copy of a form of prospectus filed under this rule shall contain in the upper right corner of the cover page the paragraph of this rule, including the subparagraph if applicable, under which the filing is made, and the

file number of the registration statement to which the prospectus relates. The information required by this paragraph may be set forth in longhand, provided it is legible.

(f) This rule shall not apply with respect to prospectuses of an investment company registered under the Investment Company Act of 1940 or a business development company.

[14 FR 202, Jan. 14, 1949, as amended at 16 FR 8736, Aug. 29, 1951; 19 FR 400, Jan. 22, 1954; 19 FR 6728, Oct. 20, 1954; 21 FR 1046, Feb. 15, 1956; 52 FR 21260, June 5, 1987; 53 FR 3878, Feb. 10, 1988; 55 FR 23923, June 13, 1990; 56 FR 30054, July 1, 1991; 57 FR 48975, Oct. 29, 1992; 60 FR 26615, May 17, 1995]

§230.427 Contents of prospectus used after nine months.

There may be omitted from any prospectus used more than 9 months after the effective date of the registration statement any information previously required to be contained in the prospectus insofar as later information covering the same subjects, including the latest available certified financial statement, as of a date not more than 16 months prior to the use of the prospectus is contained therein.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37)

[47 FR 11440, Mar. 16, 1982]

§230.428 Documents constituting a section 10(a) prospectus for Form S-8 registration statement; requirements relating to offerings of securities registered on Form S-8.

(a)(1) Where securities are to be offered pursuant to a registration statement on Form S-8 (§239.16b of this chapter), the following, taken together, shall constitute a prospectus that meets the requirements of section 10(a)

of the Act: (i) The document(s), or portions thereof as permitted by paragraph (b)(1)(ii) of this section, containing the employee benefit plan information required by Item 1 of the Form; (ii) the statement of availability of registrant information, employee benefit plan annual reports and other information required by Item 2; and (iii) the documents containing registrant information and employee benefit plan annual reports that are incorporated by reference in the registration statement pursuant to Item 3.

(2) The registrant shall maintain a file of the documents that, pursuant to paragraph (a) of this section, at any time are part of the section 10(a) prospectus, except for documents required to be incorporated by reference in the registration statement pursuant to Item 3 of Form S-8. Each such document shall be included in the file until five years after it is last used as part of the Section 10(a) prospectus to offer or sell securities pursuant to the plan. With respect to documents containing specifically designated portions that constitute part of the section 10(a) prospectus pursuant to paragraph (b)(1)(ii) of this section, the entire document shall be maintained in the file. Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all of the documents included in the file.

(b) Where securities are offered pursuant to a registration statement on Form S-8:

(1)(i) The registrant shall deliver or cause to be delivered, to each employee who is eligible to participate (or selected by the registrant to participate, in the case of a stock option or other plan with selective participation) in an employee benefit plan to which the registration statement relates, the information required by Part I of Form S-8. The information shall be in written form and shall be updated in writing in a timely manner to reflect any material changes during any period in which offers or sales are being made. When updating information is furnished, documents previously furnished need not be re-delivered, but the registrant shall furnish promptly without charge to each employee, upon written or oral request, a copy of all documents

containing the plan information required by Part I that then constitute part of the section 10(a) prospectus.

(ii) The registrant may designate an entire document or only portions of a document as constituting part of the section 10(a) prospectus. If the registrant designates only portions of a document as constituting part of the prospectus, rather than the entire document, a statement clearly identifying such portions, for example, by reference to section headings, section numbers, paragraphs or page numbers within the document must be included in a conspicuous place in the forepart of the document, or such portions must be specifically designated throughout the text of the document. Registrants shall not designate only words or sentences within a paragraph as part of a prospectus. Unless the portions of a document constituting part of the section 10(a) prospectus are clearly identified, the entire document shall constitute part of the prospectus.

(iii) The registrant shall date any document constituting part of the section 10(a) prospectus or containing portions constituting part of the prospectus and shall include the following printed, stamped or typed legend in a conspicuous place in the forepart of the document, substituting the bracketed language as appropriate: "This document [Specifically designated portions of this document] constitutes [constitute] part of a prospectus covering securities that have been registered under the Securities Act of 1933."

(iv) The registrant shall revise the document(s) containing the plan information sent or given to newly eligible participants pursuant to paragraph (b)(1)(i) of this section, if documents containing updating information would obscure the readability of the plan information.

(2) The registrant shall deliver or cause to be delivered with the document(s) containing the information required by Part I of Form S-8, to each employee to whom such information is sent or given, a copy of any one of the following:

(i) The registrant's annual report to security holders containing the information required by Rule 14a-3(b) (§240.14a-3(b) of this chapter) under the

Securities Exchange Act of 1934 (*Exchange Act*) for its latest fiscal year;

(ii) The registrant's annual report on Form 10-K and Form 10-KSB (§249.310 of this chapter), U5S (§259.5s of this chapter), 20-F (§249.220f of this chapter) or, in the case of registrants described in General Instruction A.(2) of Form 40-F, 40-F (§249.240f of this chapter) for its latest fiscal year;

(iii) The latest prospectus filed pursuant to Rule 424(b) (§230.424(b) of this chapter) under the Act that contains audited financial statements for the registrant's latest fiscal year, *Provided that* the financial statements are not incorporated by reference from another filing, and *Provided further* that such prospectus contains substantially the information required by Rule 14a-3(b) or the registration statement was on Form SB-2 (§239.28 of this chapter) or F-1 (§239.31 of this chapter); or

(iv) The registrant's effective Exchange Act registration statement on Form 10 and Form 10-SB (§249.210 of this chapter), 20-F or, in the case of registrants described in General Instruction A.(2) of Form 40-F, 40-F containing audited financial statements for the registrant's latest fiscal year.

Instructions. 1. If a registrant has previously sent or given an employee a copy of any document specified in clauses (i)-(iv) of paragraph (b)(2) for the latest fiscal year, it need not be re-delivered, but the registrant shall furnish promptly, without charge, a copy of such document upon written or oral request of the employee.

2. If the latest fiscal year of the registrant has ended within 120 days (or 190 days with respect to foreign private issuers) prior to the delivery of the documents containing the information specified by Part I of Form S-8, the registrant may deliver a document containing financial statements for the fiscal year preceding the last fiscal year, *Provided that* within the 120 or 190 day period a document containing financial statements for the latest fiscal year is furnished to each employee.

(3) The registrant shall deliver or cause to be delivered promptly, without charge, to each employee to whom information is required to be delivered, upon written or oral request, a copy of the information that has been incorporated by reference pursuant to Item 3 of Form S-8 (not including exhibits to the information that is incorporated by

reference unless such exhibits are specifically incorporated by reference into the information that the registration statement incorporates).

(4) Where interests in a plan are registered, the registrant shall deliver or cause to be delivered promptly, without charge, to each employee to whom information is required to be delivered, upon written or oral request, a copy of the then latest annual report of the plan filed pursuant to Section 15(d) of the Exchange Act, whether on Form 11-K (§249.311 of this chapter) or included as part of the registrant's annual report on Form 10-K and Form 10-KSB.

(5) The registrant shall deliver or cause to be delivered to all employees participating in a stock option plan or plan fund that invests in registrant securities (and other plan participants who request such information orally or in writing) who do not otherwise receive such material, copies of all reports, proxy statements and other communications distributed to its security holders generally, provided that such material is sent or delivered no later than the time it is sent to security holders.

(c) As used in this Rule, the term *employee benefit plan* is defined in Rule 405 of Regulation C (§230.405 of this chapter) and the term *employee* is defined in General Instruction A.1 of Form S-8.

[55 FR 23923, June 13, 1990, as amended at 57 FR 10614, Mar. 27, 1992]

§230.429 Prospectus relating to several registration statements.

(a) Where two or more registration statements have been filed by the same registrant, a prospectus which meets the requirements of the act and the rules and regulations thereunder for use in connection with the securities covered by the latest registration statement shall be deemed to meet such requirements for use in connection with the securities covered by the earlier registration statements if such prospectus includes all of the information which would currently be required in a prospectus relating to the securities covered by the earlier statements.

(b) Where the use of a combined prospectus is permitted by paragraph (a)